IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 926 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SALIM AHMED A GAFUR

Appearance:

MR UA TRIVEDI, APP for Petitioner

MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/02/2000

ORAL JUDGEMENT

1. This enhancement appeal arises from the impugned judgment and order dated 22/8/1988 rendered by the Ld. Metropolitan Magistrate, Court No.4, Ahmedabad, in Criminal Case No. 3767 of 1988 holding the accused guilty for the offence punishable u/S. 7 of the

Cinematograph Act (for short 'the Act') and rules 10/22 of the Gujarat Cinema Regulation of Exhibition by Video Rules, 1984 (for short 'the Rules') and sentenced him till rising of the Court and fine of Rs.1,000/-, in default to underego S.I. for 30 days. It would appear that the charge of section 7 of the Act has been mentioned along with rule 10/22 of the Rules. It would also appear that section 7 prescribes minimum sentence as will be soon noticed. That is how this appeal has been filed by the State since by the impugned judgment the Ld. Magistrate has rendered sentence of less than minimum prescribed under the aforesaid provisions of the Act.

2. I have heard the Ld. APP for the State and Ms. Lopa M. Bhatt, who has rendered legal assistance to the accused. Apparently it sounded that the sentence imposed was less than minimum prescribed by the aforesaid provision and no reasons were recorded by the Ld. Magistrate for the same. However, when it was submitted on behalf of the accused that there was no factual data in the charge itself for mentioning section 7 of the Act to be charged against the accused, the whole complexion of the matter had undergone a drastic change. This might be visualized : In the charge sheet as well as in the charge, the accused faced charge to the effect that at about 21.15 hours on 6/8/1988 he conducted video film centre in public at Ram Rahim Hill, collected the viewers to view Hindi film Halal Ki Kamai, charged from them Re.1/- per ticket and displayed the said film thereby committing offence punishable u/Ss. 6B and 7 of the Act and rule 10/22 of the Rules.

Now, therefore, the provision of section 7 of the Act might be perused :-

"7. Penalties for contravention of this Part.-
(1) If any person -
(a) exhibits or permits to be exhibited in any place-
(i) any film other than a film which has been certified by the Board as suitable for unrestricted public exhibition or for public exhibition restricted to adults [or to members of any profession or any class of person] and which, when exhibited, displays the prescribed mark of the Board and has not been altered or tampered with in any way since such mark was affixed thereto.

(ii) any film, which has been certified by the Board as suitable for public exhibition restricted to adults, to any person who is not an adult.

(iia) any film which has been certified by the Board as suitable for public exhibition restricted to any profession or class of persons, to a person who is not a member of such profession or who is not a member of such class, or]

(b) without lawful authority (the burden of proving which shall be on him), alters or tampers with in any way any film after it has been certified, or

(c) fails to comply with the provision contained in section 6A or with any order made by the Central Government or by the Board in the exercise of any of the powers or functions conferred on it by this Act or the rules made thereunder,

[[he shall be punishable with imprisonment for a term whicch may extend to three years, or with fine which may extend to one lakh rupees, or with both, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided that a person who exhibits or permitstobe exhibited in any place a video film in contravention of the provisions of sub-clause (i) of clause (a) shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees, but which may extend to one lakh rupees and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues;

Provided further that a court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months, or a fine of less than twenty thousand rupees:

xxx xxx xxx xxx"

It would clearly appear from the plain reading of the aforesaid provision, which is mentioned in the charge that there is not one fact constituting the offence punishable under the aforesaid provision set out in the charge. Hence, conviction under that provision itself would be bad in law, even though the accused has pleaded guilty. It would be plain to find that the accused pleaded guilty to the facts charged against him and, therefore, the offence constituted under such facts. Facts charged against him are necessarily for the offence punishable under rule 22 read with rule 10 of the Rules which provide for maximum sentence of fine of Rs.1,000/and no sentence of imprisonment has been prescribed under that provision. This being the outcome of this appeal, the impugned order shall have to be altered as under :-

On a plea of guilt which was recorded by the Ld. Magistrate, accused will stand convicted for the offence punishable under rule 22 read with rule 10 of the Rules and such conviction will stand confirmed; whereas conviction u/S. 7 of the Act will stand set aside. Substantive sentence till the rising of the Court under that provision shall also stand set aside. Whereas the sentence of fine shall stand confirmed. This appeal will accordingly stand partly allowed in favour of the accused.

PVR. * * *